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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 FEDERAL NATIONAL MORTGAGE
8 ASSOCIATION,

9 Plaintiff,

10 v.

11 SATICOY BAY LLC SERIES 6671 W.
12 TROPICANA 103; and CASA MESA
VILLAS HOMEOWNERS ASSOCIATION,

13 Defendants.

Case No. 2:17-cv-01758-RFB-GWF

ORDER

14 **I. INTRODUCTION**

15 Before the Court is Defendant Saticoy Bay LLC Series 6671 W. Tropicana 103 (“Saticoy
16 Bay”) Motion to Strike Defendant Casa Mesa Villas Homeowners Association’s (“Casa Mesa”) (collectively with Saticoy Bay, “Defendants”) Demand for Trial by Jury. ECF No. 19.

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19 **II. BACKGROUND**

20 This matter centers on the effect of a nonjudicial foreclosure sale conducted by Casa Mesa
21 as a homeowners association in March 2016 under the then-effective version of the Nevada
22 Revised Statutes (“NRS”) Chapter 116. Plaintiff Federal National Mortgage Association
23 (“Plaintiff”) sued Defendants on June 26, 2018. ECF No. 1. In its Amended Complaint, Plaintiff
24 asserts a single claim against Casa Mesa: declaratory relief under the 5th and 14th Amendment.¹
25 ECF No. 2. Plaintiff seeks a declaratory judgment that the then-effective version of NRS Chapter
26 116 was facially unconstitutional, meaning that Plaintiff’s rights to the property were not

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28 ¹ Plaintiff asserts additional claims against Saticoy bay for declaratory relief and quiet title under 12 U.S.C. § 4617(j)(3) and the 5th and 14th Amendments to the U.S. Constitution as well as a claim for permanent and preliminary injunction. ECF No. 2.

1 extinguished by the foreclosure or that the foreclosure is void or invalid and should be set aside.

2 Id. Plaintiff also seeks general and special damages as well as and attorney's fees and costs.

3 Casa Mesa filed a Demand for Trial by Jury on October 20, 2017. ECF No. 17. Saticoy
4 Bay now moves to strike the demand. ECF No. 19. No party has opposed Saticoy Bay's motion.

5 6 **III. LEGAL STANDARD**

7 Federal Rule of Civil Procedure ("Rule") 38 states: "On any issue triable of right by a jury,
8 a party may demand a jury trial by serving the other parties with a written demand—which may
9 be included in a pleading—no later than 14 days after the last pleading directed to the issue is
10 served." To determine if a particular claim is entitled to a jury trial:

11 First, we compare the statutory action to 18th-century actions brought in the courts
12 of England prior to the merger of the courts of law and equity. Second, we examine
13 the remedy sought and determine whether it is legal or equitable in nature. The
14 second stage of this analysis is more important than the first. If, on balance, these
15 two factors indicate that a party is entitled to a jury trial under the Seventh
Amendment, we must decide whether Congress may assign and has assigned
resolution of the relevant claim to a non-Article III adjudicative body that does not
use a jury as factfinder.

16 Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 42 (1989). "[T]he right to a jury trial in the federal
17 courts is to be determined as a matter of federal law in diversity as well as other actions." Simler
18 v. Conner, 372 U.S. 221, 222 (1963). The right to a trial by jury, afforded by the Seventh
19 Amendment, "does not extend to cases of equity jurisdiction." Katchen v. Landy, 382 U.S. 323,
20 337 (1966); see also Dollar Sys., Inc. v. Avcar Leasing Sys., Inc., 890 F.2d 165, 170 (9th Cir.
21 1989). The Supreme Court has instructed that "the nature of the remedy is more important for
22 Seventh Amendment purposes than the nature of the right." Spinelli v. Gaughan, 12 F.3d 853, 857
23 (9th Cir. 1993).

24 25 **III. DISCUSSION**

26 Saticoy Bay moves to strike Casa Mesa's jury demand, arguing that the equitable nature of
27 each of Plaintiff's claims bars the right to a jury trial. The Court agrees.

28 As an initial matter, Casa Mesa failed to respond to Saticoy Bay's motion. Casa Mesa

1 therefore consented to the granting of the motion. LR 7-2(d) (“The failure of an opposing party to
2 file points and authorities in response to any motion, except a motion under Fed. R. Civ. P. 56 or
3 a motion for attorney’s fees, constitutes a consent to the granting of the motion.”).

4 Additionally, the Court finds the single claim asserted against Casa Mesa equitable in
5 nature. Plaintiff seeks a declaratory order that the version of NRS Chapter 116 in effect at the time
6 of the foreclosure sale was facially unconstitutional under the 5th and 14th Amendment to the U.S.
7 Constitution. Plaintiff seeks declaratory relief under 28 U.S.C. § 2201, which allows a court to
8 “declare the rights and other legal relations of any interested party seeking such declaration,
9 whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a). Although 28 U.S.C.
10 § 2201 itself provides equitable relief, the statute “specifically preserves the right to jury trial for
11 both parties” “while allowing prospective defendants to sue to establish their nonliability[.]”
12 Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 504 (1959). Even so, Plaintiff seeks equitable
13 relief through its claim against Casa Mesa. Plaintiff prays for relief in the form of a declaratory
14 order that either finds (1) the foreclosure did not extinguish its rights to the property, and thus
15 Saticoy Bay purchased the property subject to Plaintiff’s rights, or (2) the foreclosure sale must be
16 set aside as void or invalid. The Court therefore finds that Casa Mesa is not entitled to trial by jury
17 based on the nature of the remedy sought by Plaintiff. The Court grants Saticoy Bay’s Motion to
18 Strike the Demand for Trial by Jury accordingly.

19 20 **IV. CONCLUSION**

21 **IT IS ORDERED** that Defendant Saticoy Bay LLC Series 6671 W. Tropicana 103’s
22 Motion to Strike the Demand for Jury Trial [ECF No. 19] is GRANTED. The Clerk of the Court
23 is instructed to strike Defendant Casa Mesa Villas Homeowners Association’s Demand for Trial
24 by Jury [ECF No. 17].

25 DATED: September 28, 2018.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE